

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ELK GROVE UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015010203

ORDER GRANTING REQUEST FOR
RECONSIDERATION

On February 24, 2015, the undersigned administrative law judge issued an order denying Student's motion to continue the due process hearing scheduled to begin on February 26, 2015. On February 25, 2015, Student filed a motion for reconsideration of that ruling. On February 25, 2015, over Elk Grove Unified School District's objection, this ALJ granted reconsideration of the order denying Student's motion to continue, granted a one-day continuance, and ordered the due process hearing to commence on Friday, February 27, 2015. On February 26, 2015, Student filed another motion for reconsideration and motion to continue the February 27, 2015, hearing date. The basis for the request for reconsideration was that Mr. Leemhuis, Student's attorney of record, is not able to travel from southern California after his previously scheduled court appearance to northern California to start a hearing the following day. Elk Grove filed an opposition to the motion for reconsideration and requests that the matter proceed tomorrow as scheduled. The motion for reconsideration was denied as no new facts or law was presented.

At 3:08 p.m. on February 26, 2015, Mr. Leemhuis submits another motion for reconsideration. The basis for this request is that he has another court appearance in Los Angeles on February 27, 2015, that had been previously mis-calendared for March 27, 2015. This newly discovered fact is presented to OAH for the first time less than two hours before the close of business the day before the hearing is scheduled to commence.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

DISCUSSION

There has been what now amounts to three requests for reconsideration of the initial denial of the continuance in this matter. It is expected that when counsel makes a request for reconsideration, that he would have presented all of his arguments supporting the request for reconsideration at one time, in one motion, rather than continuing to submit multiple requests in piecemeal each asserting a different theory attempting to justify an additional continuance in this matter.

Mr. Leemhuis does not indicate in his declaration when he discovered this calendaring conflict and whether or not this motion could have been filed earlier. Despite the forgoing, the court conflict, which should have been presented to OAH far sooner, is a new fact justifying reconsideration. The motion to continue is granted. Elk Grove argues in its opposition that it has incurred expenses associated with opposing multiple motions. Elk Grove may submit a request to shift costs in this matter if it so chooses. Such a request and any opposition would be considered.

ORDER

1. The request for reconsideration is granted.
2. The motion to continue is granted.
3. Friday, February 27, 2015, is vacated as a hearing day.
4. This matter will commence Tuesday, March 3, 2015, at 9:30 a.m.
5. No further requests for continuance will be granted in this matter absent extremely good cause.

IT IS SO ORDERED.

DATE: February 26, 2015

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings